

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 11508 of 2015 (K)

PETITIONER:

**N A KURIAKOSE, PROPRIETOR,
M/S.NEW TECH FOUNDRY AND
ENGINEERING WORKS,
PAZHAMTHOTTAM.P.O, ERNAKULAM.**

**BY ADVS.SRI.P.S.SOMAN
SMT.T.RADHAMANY**

RESPONDENT(S):

- 1. THE INTELLIGENCE INSPECTOR,
SQUAD -II, COMMERCIAL TAXES,
KOZHIKODE - 670 001.**
- 2. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
TAXES DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 3. THE COMMISSIONER OF COMMERCIAL TAXES,
GOVERNMENT OF KERALA, TAX TOWER,
KARAMANA.P.O., THIRUVANANTHAPURAM, PIN - 695 002.**
- 4. KEERTHI TRANSPORTS, NO.310,
WALL TAX ROAD, CHENNAI - 600 003.**

BY GOVT PLEADER SMT.SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 11508 of 2015 (K)

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 : TRUE COPY OF THE REGISTRATION CERTIFICATE OF THE PETITIONER.

EXHIBIT P2 : TRUE COPY OF THE RETURN FILED BY THE PETITIONER FOR THE MONTH OF FEBRUARY, 2015.

EXHIBIT P3 : TRUE COPY OF THE COMMERCIAL INVOICE NO.0008 DATED 1.4.2015 ACCOMPANIED WITH THE CONSIGNMENT.

EXHIBIT P4 : TRUE COPY OF THE FORM 17A NOTICE NO.VCR-II/06/15-16 DATED 4.4.2015 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXHIBIT P5 : TRUE COPY OF THE INVOICE NO.1521 DATED 10.3.2015 ISSUED BY CONSIGNOR M/S.MAHENDRA METAL CORPORATION, CHENNAI TO THE PETITIONER HAVING CHECK POST SEAL.

RESPONDENT'S EXHIBITS: - NIL

/TRUE COPY/

P.A. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 11508 of 2015 (K)

.....
Dated this the 9th day of April, 2015

JUDGMENT

The petitioner is aggrieved by Ext.P4 detention notice whereby a consignment of S.S.Sheets, that was being transported at the instance of the petitioner, was detained by the respondents at Walayar. In the writ petition, the petitioner is aggrieved by the insistence of the respondents that the petitioner must pay the security deposit demanded in the detention notice as a condition for release of the goods and vehicle.

2. Heard Sri.P.S.Soman Pulladan, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I dispose the writ petition with the following directions:

- i. On a perusal of Ext.P4 detention notice, it is seen that the objection of the respondents is that, although the invoice that accompanied the transportation of the goods showed the items to be S.S.Sheets of a particular weight, on actual

weighment of the consignment it was found that, there was an excess quantity of S.S.Sheets that was being transported under cover of the same invoice. The respondents, therefore, suspected that there would be possible evasion of tax, pursuant to the transportation of the goods. The learned counsel for the petitioner would submit that, the truck that carried the goods also contained goods belonging to other persons and the difference in weight could be attributed to the weighment of goods belonging to others.

- ii. The learned Government Pleader on instructions would submit that this is not the case inasmuch as the goods belonging to the petitioner were separately weighed and the difference in weight was noticed in respect of the consignment that was meant for the petitioner. I take note, however, of the fact the petitioner is a registered dealer in the State and there was a valid document as prescribed under the KVAT Act for the transportation of the goods. Accordingly, I direct the 1st respondent to release the goods and the vehicle, subject to the condition that the petitioner pays 25% of the amount demanded as security deposit in Ext.P4 notice, and executing a simple bond without

sureties for the balance amount demanded therein,
before the 1st respondent.

iii. The respondents shall thereafter transmit the files
to the adjudicating authority who shall adjudicate
the matter and pass orders, after hearing the
petitioner, within two months from the date of
receipt of a copy of this judgment.

iv. The petitioner shall produce a copy of this
judgment and a copy of the writ petition before the
1st respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/09/04/

